

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

MR. SPEAKER:

*Your Committee on Financial Institutions, to which was referred House Bill 1176, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-20-1-27, AS AMENDED BY P.L.145-2008,
- 3 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2009]: Sec. 27. (a) The home ownership education account
- 5 within the state general fund is established to support the home
- 6 ownership education programs established under section 4(d) of this
- 7 chapter. The account is administered by the authority.
- 8 (b) The home ownership education account consists of ~~(1) fees~~
- 9 ~~collected under IC 24-9-9; and (2) civil penalties imposed and~~
- 10 ~~collected under:~~
- 11 ~~(A) (1) IC 6-1.1-12-43(g)(2)(B); or~~
- 12 ~~(B) (2) IC 27-7-3-15.5(e); or~~
- 13 **(3) IC 24-9-4.5-9(b).**
- 14 (c) The expenses of administering the home ownership education
- 15 account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the home ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 2. IC 23-2-5-15, AS AMENDED BY P.L.230-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. **(a) This section does not apply to a violation or an alleged violation of section 20(f)(9) of this chapter.**

(b) Any person who violates this chapter or any rule or regulation adopted under this chapter, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a person violates any provision of this chapter, or any rule or regulation adopted under this chapter, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

SECTION 3. IC 23-2-5-20, AS AMENDED BY P.L.145-2008, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. **(a) As used in this section, "ability to repay", with respect to a home loan, including the consolidation or refinancing of an existing home loan, means the following factors likely to affect a borrower's ability to repay the home loan at the loan's full monthly cost:**

(1) The borrower's:

(A) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;

(B) expenses;

(C) assets; and

(D) liabilities, including any loan obligations that have been incurred but are not yet due and payable;

as of the date, or the projected date, of the closing of the home loan.

(2) The borrower's credit history.

(b) As used in this section, "borrower" includes a prospective borrower, where appropriate.

(c) As used in this section, "full monthly cost", with respect to

a home loan, means the maximum monthly payment that the borrower will be required to pay with respect to the home loan, calculated as the total of the following monthly costs that the borrower will be responsible for paying during the term of the home loan, to the extent determinable as of the date, or the projected date, of the closing of the home loan:

(1) Principal plus interest at the home loan's fully indexed rate.

(2) Property taxes. If the home loan will be secured by a new home, the construction of which will not be complete as of the date, or the projected date, of the closing of the home loan, the property taxes considered for purposes of this subsection must be an estimate that:

(A) is based on the property taxes that were most recently due and payable with respect to completely constructed, comparable new homes located in the area in which the new home is or will be located; and

(B) is not based on the assessed value of unimproved real estate.

(3) Homeowners insurance premiums.

(4) Private mortgage insurance premiums.

(5) Premiums for:

(A) credit life insurance;

(B) credit disability insurance;

(C) credit unemployment insurance; or

(D) other consumer credit insurance;

that the borrower has agreed to pay.

(6) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(d) As used in this section, "fully indexed rate", with respect to a home loan, means:

(1) for a fixed rate home loan in which the interest rate will not vary during the term of the loan, the rate as of the date, or the projected date, of closing;

(2) for a home loan in which the interest varies according to an index, the sum of the index rate as of the date, or the projected date, of closing plus the maximum margin

1 **permitted at any time under the loan agreement; or**
 2 **(3) for all other home loans in which the rate may vary at any**
 3 **time during the term of the loan, the maximum rate that may**
 4 **be charged during the term of the loan.**

5 **(e) As used in this section, "home loan" has the meaning set**
 6 **forth in IC 24-9-2-9.**

7 ~~(a)~~ (f) A person shall not, in connection with a contract for the
 8 services of a loan broker, either directly or indirectly, do any of the
 9 following:

- 10 (1) Employ any device, scheme, or artifice to defraud.
- 11 (2) Make any untrue statements of a material fact or omit to state
 12 a material fact necessary in order to make the statements made, in
 13 the light of circumstances under which they are made, not
 14 misleading.
- 15 (3) Engage in any act, practice, or course of business that operates
 16 or would operate as a fraud or deceit upon any person.
- 17 (4) Collect or solicit any consideration, except a bona fide third
 18 party fee, in connection with a loan until the loan has been closed.
- 19 (5) Receive any funds if the person knows that the funds were
 20 generated as a result of a fraudulent act.
- 21 (6) File or cause to be filed with a county recorder any document
 22 that the person knows:

23 (A) contains:

- 24 (i) a misstatement; or
- 25 (ii) an untrue statement;

26 of a material fact; or

27 (B) omits a statement of a material fact that is necessary to
 28 make the statements that are made, in the light of
 29 circumstances under which they are made, not misleading.

30 (7) Knowingly release or disclose the unencrypted, unredacted
 31 personal information of one (1) or more borrowers or prospective
 32 borrowers, unless the personal information is used in an activity
 33 authorized by the borrower or prospective borrower under one (1)
 34 or more of the following circumstances:

35 (A) The personal information is:

- 36 (i) included on an application form or another form; or
- 37 (ii) transmitted as part of an application process or an
 38 enrollment process.

(B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a home loan to, or procure a home loan on behalf of, a borrower without grounds to believe that, as of the date or the projected date of the closing of the home loan, the borrower has the ability to repay the loan as written.

~~(b)~~ (g) A person who commits an act described in subsection ~~(a)~~ (f) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 4. IC 24-4.4-2-201, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on

which the accurate payoff amount is provided;
 if an accurate payoff amount is not provided by the creditor or
 mortgage servicer not later than ten (10) calendar days after the
 creditor or mortgage servicer receives the debtor's second written
 request, and the creditor or mortgage servicer fails to comply with
 subdivision (a).

**(2) This subsection applies to a first lien mortgage transaction,
 or the refinancing or consolidation of a first lien mortgage
 transaction, that:**

(a) is closed after June 30, 2009; and

**(b) has an interest rate that is subject to change at one (1) or
 more times during the term of the first lien mortgage
 transaction.**

**A creditor in a transaction to which this subsection applies may not
 contract for and may not charge the debtor a prepayment fee or
 penalty.**

~~(2)~~ **(3)** This subsection applies to a first lien mortgage transaction
 with respect to which any installment or minimum payment due is
 delinquent for at least sixty (60) days. The creditor, servicer, or the
 creditor's agent shall acknowledge a written offer made in connection
 with a proposed short sale not later than ten (10) business days after the
 date of the offer if the offer complies with the requirements for a
 qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The
 creditor, servicer, or creditor's agent is required to acknowledge a
 written offer made in connection with a proposed short sale from a
 third party acting on behalf of the debtor only if the debtor has
 provided written authorization for the creditor, servicer, or creditor's
 agent to do so. Not later than thirty (30) business days after receipt of
 an offer under this subsection, the creditor, servicer, or creditor's agent
 shall respond to the offer with an acceptance or a rejection of the offer.
 As used in this subsection, "short sale" means a transaction in which
 the property that is the subject of a first lien mortgage transaction is
 sold for an amount that is less than the amount of the debtor's
 outstanding obligation under the first lien mortgage transaction. A
 creditor or mortgage servicer that fails to respond to an offer within the
 time prescribed by this subsection is liable in accordance with 12
 U.S.C. 2605(f) in any action brought under that section.

SECTION 5. IC 24-4.4-2-201.5 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2009]: **Sec. 201.5. (1) As used in this section, "ability to repay", with respect to a first lien mortgage transaction, including the consolidation or refinancing of an existing first lien mortgage transaction, means the following factors likely to affect a debtor's ability to repay the first lien mortgage transaction at the first lien mortgage transaction's full monthly cost:**

(a) The debtor's:

- (i) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;**
- (ii) expenses;**
- (iii) assets; and**
- (iv) liabilities, including any loan obligations that have been incurred but are not yet due and payable; as of the date, or the projected date, of the closing of the first lien mortgage transaction.**

(b) The debtor's credit history.

(2) As used in this section, "debtor" includes a prospective debtor, where appropriate.

(3) As used in this section, "full monthly cost", with respect to a first lien mortgage transaction, means the maximum monthly payment that the debtor will be required to pay with respect to the first lien mortgage transaction, calculated as the total of the following monthly costs that the debtor will be responsible for paying during the term of the first lien mortgage transaction, to the extent determinable as of the date, or the projected date, of the closing of the first lien mortgage transaction:

(a) Principal plus interest at the first lien mortgage transaction's fully indexed rate.

(b) Property taxes. If the first lien mortgage transaction will be secured by a new dwelling, the construction of which will not be complete as of the date, or the projected date, of the closing of the first lien mortgage transaction, the property taxes considered for purposes of this subsection must be an estimate that:

- (A) is based on the property taxes that were most recently due and payable with respect to completely constructed,**

- 1 comparable new homes located in the area in which the
2 new dwelling is or will be located; and
3 **(B) is not based on the assessed value of unimproved real**
4 **estate.**
- 5 **(c) Homeowners insurance premiums.**
6 **(d) Private mortgage insurance premiums.**
7 **(e) Premiums for:**
8 **(i) credit life insurance;**
9 **(ii) credit disability insurance;**
10 **(iii) credit unemployment insurance; or**
11 **(iv) other consumer credit insurance;**
12 **that the debtor has agreed to pay.**
- 13 **(f) Homeowners and other assessments, such as special**
14 **assessments, condominium fees, and homeowners association**
15 **fees.**
- 16 **(4) As used in this section, "fully indexed rate", with respect to**
17 **a first lien mortgage transaction, means:**
18 **(a) for a fixed rate first lien mortgage transaction in which the**
19 **interest rate will not vary during the term of the first lien**
20 **mortgage transaction, the rate as of the date, or the projected**
21 **date, of closing;**
22 **(b) for a first lien mortgage transaction in which the interest**
23 **varies according to an index, the sum of the index rate as of**
24 **the date, or the projected date, of closing plus the maximum**
25 **margin permitted at any time under the loan agreement; or**
26 **(c) for all other first lien mortgage transactions in which the**
27 **rate may vary at any time during the term of the first lien**
28 **mortgage transaction, the maximum rate that may be charged**
29 **during the term of the first lien mortgage transaction.**
- 30 **(5) A creditor may not recommend or issue a first lien mortgage**
31 **transaction to a debtor without grounds to believe that, as of the**
32 **date or the projected date of the closing of the first lien mortgage**
33 **transaction, the debtor has the ability to repay the first lien**
34 **mortgage transaction as written.**
- 35 SECTION 6. IC 24-4.4-3-113, AS ADDED BY P.L.145-2008,
36 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2009]: Sec. 113. The grant of powers to the department under
38 this article does not affect remedies available to debtors under this

article or under other principles of law or equity. **However, a creditor is not liable to:**

- (a) a debtor;**
- (b) a subsequent purchaser of property that is the subject of a first lien mortgage transaction; or**
- (c) any other person;**

for a violation or an alleged violation of IC 24-4.4-2-201.5(5).

SECTION 7. IC 24-5-23.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 23.5. Real Estate Appraisals

Sec. 1. (a) As used in this chapter, "appraisal" means an opinion or estimation of the value of real property that is the subject of a real estate transaction.

(b) The term includes the following:

- (1) The results of an automated valuation model.**
- (2) A broker's price opinion.**
- (3) A desktop evaluation.**

Sec. 2. As used in this chapter, "appraisal company" means a sole proprietorship, firm, corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, or other business unit or association that:

- (1) performs appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or**
- (2) holds itself out to the public as performing appraisals.**

Sec. 3. (a) As used in this chapter, "creditor" means a person:

- (1) that regularly engages in the extension of mortgage loans that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and**
- (2) to whom the obligation arising from a mortgage loan is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.**

(b) The term does not include a person described in:

- (1) IC 24-9-2-6(a)(2) if the person described in IC 24-9-2-6(a)(2) is not the person extending the credit in the**

1 transaction; or

2 (2) IC 24-9-2-6(b).

3 Sec. 4. As used in this chapter, "interested person", with respect
4 to a real estate transaction, means any person that is a party to or
5 has a pecuniary interest in the real estate transaction, including
6 any of the following:

7 (1) The creditor in a mortgage loan.

8 (2) The borrower in a mortgage loan.

9 (3) A buyer in the transaction.

10 (4) A seller in the transaction.

11 (5) A loan broker, a loan originator, a principal manager, or
12 any other person licensed or certified, or required to be
13 licensed or certified, under IC 23-2-5.

14 (6) A real estate:

15 (A) broker; or

16 (B) salesperson;

17 licensed under IC 25-34.1, or any other person required to be
18 licensed under IC 25-34.1.

19 (7) A real estate appraiser.

20 (8) A provider of relocation services.

21 (9) A settlement service provider not otherwise described in
22 this section.

23 Sec. 5. (a) As used in this chapter, "mortgage loan" means a
24 loan in which a mortgage, deed of trust, or land contract that
25 constitutes a lien is created or retained against an interest in real
26 property in Indiana.

27 (b) The term includes the following:

28 (1) A home loan subject to IC 24-9.

29 (2) A loan described in IC 24-9-1-1, to the extent allowed
30 under federal law.

31 (3) A first lien mortgage transaction (as defined in
32 IC 24-4.4-1-301(6)) subject to IC 24-4.4.

33 (4) A consumer credit sale subject to IC 24-4.5-2 in which a
34 mortgage, deed of trust, or land contract that constitutes a
35 lien is created or retained against an interest in real property
36 in Indiana.

37 (5) A consumer credit loan subject to IC 24-4.5-3 in which a
38 mortgage, deed of trust, or land contract that constitutes a

1 lien is created or retained against an interest in real property
2 in Indiana.

3 (6) A loan in which a mortgage, deed of trust, or land contract
4 that constitutes a lien is created or retained against land in
5 Indiana upon which there is a dwelling that is not or will not
6 be used by the borrower primarily for personal, family, or
7 household purposes. The term includes a loan that is secured
8 by land in Indiana upon which there is a dwelling that is
9 purchased by or through the borrower for investment or
10 other business purposes.

11 Sec. 6. As used in this chapter, "real estate appraiser" means a
12 person who develops an opinion of or estimates the value of real
13 property in a real estate transaction in Indiana, regardless of
14 whether the person is licensed or certified, or required to be
15 licensed or certified, under the real estate appraiser licensure and
16 certification program established under IC 25-34.1-3-8.

17 Sec. 7. As used in this chapter, "real estate transaction" means
18 a transaction that involves one (1) or both of the following:

19 (1) The sale or lease of any legal or equitable interest in real
20 estate located in Indiana.

21 (2) The issuance, refinancing, or consolidation of a mortgage
22 loan.

23 Sec. 8. (a) As used in this chapter, "settlement service provider"
24 means a person that provides any settlement service (as defined in
25 24 CFR 3500.2) in connection with the closing of a real estate
26 transaction.

27 (b) The term includes a closing agent (as defined in
28 IC 6-1.1-12-43(a)(2)).

29 Sec. 9. (a) An interested person in a real estate transaction shall
30 not influence or attempt to influence:

31 (1) the independent judgment of a real estate appraiser with
32 respect to the value of the real estate that is the subject of the
33 transaction; or

34 (2) the development, reporting, result, or review of an
35 appraisal prepared in connection with the transaction;
36 through bribery, coercion, extortion, intimidation, collusion, or any
37 other manner.

38 (b) The following acts are prohibited by this section:

1 (1) Withholding or reducing, or threatening to withhold or
2 reduce, the payment of an appraisal fee based on the opinion,
3 conclusion, or valuation determined by a real estate
4 appraiser.

5 (2) Withholding or threatening to withhold future business for
6 a real estate appraiser or an appraisal company based on the
7 opinion, conclusion, or valuation determined by a real estate
8 appraiser, including removing a real estate appraiser or an
9 appraisal company from a list of approved appraisers used by
10 the interested party in real estate transactions.

11 (3) Expressly or impliedly promising future business,
12 promotions, or increased compensation for a real estate
13 appraiser or an appraisal company based on the opinion,
14 conclusion, or valuation determined by a real estate
15 appraiser.

16 (4) Conditioning payment of an appraisal fee or a bonus on
17 the opinion, conclusion, or valuation to be reached by a real
18 estate appraiser.

19 (5) Requesting that a real estate appraiser provide a
20 predetermined opinion, conclusion, or valuation.

21 (6) Providing a real estate appraiser with:

22 (A) an anticipated, estimated, encouraged, or desired
23 valuation for the subject real estate; or

24 (B) a proposed or target amount to be loaned to the
25 borrower in a mortgage loan connected with the
26 transaction.

27 However, this subdivision does not prohibit a person from
28 providing a real estate appraiser with a copy of the purchase
29 agreement in a transaction involving the sale of real estate.

30 (7) Ordering, obtaining, using, or paying for a second or
31 subsequent appraisal in a transaction involving the issuance,
32 refinancing, or consolidation of a mortgage loan unless:

33 (A) the interested person:

34 (i) has a reasonable basis to believe that the initial
35 appraisal was flawed or tainted; and

36 (ii) notes the basis for that belief in the loan file; or

37 (B) the second or subsequent appraisal is performed in
38 connection with a prefunding or postfunding appraisal

1 review program or quality control process established by
2 the creditor in the mortgage loan.

3 (c) This section does not prohibit an interested person from
4 requesting that a real estate appraiser:

5 (1) consider additional appropriate information concerning
6 the real estate that is the subject of the transaction;

7 (2) provide further detail, substantiation, or explanation for
8 the real estate appraiser's opinion, conclusion, or valuation;

9 or

10 (3) correct factual errors in an appraisal report.

11 Sec. 10. (a) This subsection applies to a creditor that issues
12 mortgage loans in Indiana on a regular basis. A creditor to which
13 this subsection applies shall, not later than three (3) business days
14 after receiving a written application for a mortgage loan from a
15 borrower or prospective borrower, provide to the borrower or
16 prospective borrower a notice that includes:

17 (1) contact information for the homeowner protection unit
18 established by the attorney general under IC 4-6-12,
19 including:

20 (A) an electronic mail address for the homeowner
21 protection unit; and

22 (B) the toll free telephone number described in
23 IC 4-6-12-3.5; and

24 (2) a statement that the borrower or prospective borrower
25 may contact the homeowner protection unit to report an
26 attempt or action taken, or suspected to have been taken, to
27 influence, in a manner prohibited by this chapter, an
28 appraisal prepared in connection with a real estate
29 transaction.

30 The creditor shall provide the notice required by this subsection by
31 delivering it to the borrower or prospective borrower or placing it
32 in the United States mail to the borrower or prospective borrower
33 within the time prescribed by this subsection.

34 (c) Beginning in 2009, the report provided by the mortgage
35 lending and fraud prevention task force to the legislative council
36 under P.L.145-2008, SECTION 35, must include the following
37 information:

38 (1) The total number of complaints or reports:

- 1 (A) received by the homeowner protection unit during the
- 2 most recent state fiscal year; and
- 3 (B) concerning an attempt or action taken, or suspected to
- 4 have been taken, to influence, in a manner prohibited by
- 5 this chapter, an appraisal prepared in connection with a
- 6 real estate transaction.
- 7 (2) From the total number of complaints or reports reported
- 8 under subdivision (1), a breakdown of the sources of the
- 9 complaints or reports, classified according to the
- 10 complainants' interest in or relationship to the real estate
- 11 transactions upon which the complaints or reports are based.
- 12 (3) A description of any:
 - 13 (A) disciplinary or enforcement actions taken; or
 - 14 (B) criminal prosecutions pursued;
 - 15 by the homeowner protection unit or any entity listed in
 - 16 IC 4-6-12-4 and having jurisdiction in the matter, as
 - 17 applicable, in connection with the complaints or reports
 - 18 reported under subdivision (1).
- 19 The homeowner protection unit shall make available to the
- 20 mortgage lending and fraud prevention task force any information
- 21 necessary to provide the information required under this
- 22 subsection in the task force's report to the legislative council.
- 23 Sec. 11. (a) A person that knowingly or intentionally violates
- 24 section 9 of this chapter commits:
 - 25 (1) a Class A misdemeanor; and
 - 26 (2) an act that is:
 - 27 (A) actionable by the attorney general under IC 24-5-0.5;
 - 28 and
 - 29 (B) subject to the penalties listed in IC 24-5-0.5.
- 30 Whenever a judgment is entered for an offense described in
- 31 subdivision (1), the court shall add to any fine imposed the amount
- 32 of any fee or other compensation earned by the person in the
- 33 commission of the offense. Each transaction that violates section 9
- 34 of this chapter constitutes a separate offense.
- 35 (b) The attorney general or the prosecuting attorney of any
- 36 county in which a violation occurs may maintain an action in the
- 37 name of the state of Indiana to enjoin a person from violating this
- 38 chapter. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order the person to make restitution to a party aggrieved by the person's violation of this chapter;
- (3) order the person to reimburse the attorney general or a prosecuting attorney for the costs of investigating and prosecuting the violation; and
- (4) impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation.

(c) A person that violates an injunction issued under this section is subject to a civil penalty of not more than ten thousand dollars (\$10,000) per violation. The court that issues the injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this subsection.

(d) A civil penalty imposed and collected under this section shall be deposited in the investigative fund established by IC 25-34.1-8-7.5.

(e) The enforcement procedures established by this section are cumulative and an enforcement procedure available under this section is supplemental to any other enforcement procedure available under:

- (1) this section; or
- (2) any other state or federal law, rule, or regulation;

for a violation of this chapter.

Sec. 12. (a) Subject to subsection (b), a person who is aggrieved by a violation of this chapter may bring an action, in a court having jurisdiction, against any person responsible for the violation. The court may award one (1) or more of the following to a person who brings an action under this section:

- (1) Actual damages, including consequential damages. A complainant is not required to demonstrate reliance in order to receive actual damages.
- (2) Statutory damages of at least one thousand five hundred dollars (\$1,500) and not more than seven thousand five hundred dollars (\$7,500) for each offense.
- (3) The complainant's reasonable costs and attorney's fees.
- (4) Injunctive, declaratory, and other equitable relief as the court determines appropriate.

A person is not required to exhaust any administrative remedies

under this chapter or under any other applicable law before bringing an action under this subsection. However, a person may not bring a class action for a violation of this chapter.

(b) An action under subsection (a) must be brought not later than five (5) years after the violation occurs. However, this subsection does not prevent a borrower in a mortgage loan from asserting:

(1) in any action to collect a debt arising from the mortgage loan that is brought by a creditor or other person more than five (5) years after an alleged violation of this chapter occurred; and

(2) as a matter of defense by recoupment or set off;

that a violation of this chapter occurred.

(c) An award of damages under subsection (a) has priority over any civil penalty imposed for a violation of this chapter.

(d) The remedies provided in this section are cumulative and a remedy available under this section to a person aggrieved by a violation of this chapter is supplemental to any other remedies available to the person under:

(1) this section; or

(2) any other state or federal law, rule, or regulation;

for the violation.

SECTION 8. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records and documents, including the foreclosure consultant contract, related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of the foreclosure consultant contract entered into by the foreclosure consultant and the homeowner.**

SECTION 9. IC 24-9-1-1, AS AMENDED BY P.L.181-2006, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1. Except for ~~IC 24-9-3-7(3)~~ IC 24-9-3-7(c)(3) and IC 24-9-3-7(c)(4), this article does not apply to:**

(1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, savings banks, credit unions, or industrial loan and investment companies;

- 1 or
 2 (2) a loan:
 3 (A) that can be purchased by the Federal National Mortgage
 4 Association, the Federal Home Loan Mortgage Association, or
 5 the Federal Home Loan Bank;
 6 (B) to be insured by the United States Department of Housing
 7 and Urban Development;
 8 (C) to be guaranteed by the United States Department of
 9 Veterans Affairs;
 10 (D) to be made or guaranteed by the United States Department
 11 of Agriculture Rural Housing Service;
 12 (E) to be funded by the Indiana housing and community
 13 development authority; or
 14 (F) with a principal amount that exceeds the conforming loan
 15 size limit for a single family dwelling as established by the
 16 Federal National Mortgage Association.

17 SECTION 10. IC 24-9-2-10 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) Except as
 19 provided in subsection (b), "points and fees" means the total of the
 20 following:

- 21 (1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January
 22 1, 2004).
 23 (2) All compensation paid directly or indirectly to a mortgage
 24 broker, including a broker that originates a loan in the broker's
 25 own name.

26 As used in subdivision (2), "compensation" does not include a payment
 27 included in subdivision (1).

28 (b) The term does not include the following:

- 29 (1) Bona fide discount points.
 30 (2) An amount not to exceed one and one-half (1 1/2) points in
 31 indirect broker compensation, if the terms of the loan do not
 32 include:

33 **(A) a prepayment penalty, in the case of a home loan**
 34 **described in IC 24-9-3-6(b); or**

35 **(B) a prepayment penalty that exceeds two percent (2%) of the**
 36 **home loan ~~principle~~, principal, in the case of a home loan**
 37 **other than a home loan described in IC 24-9-3-6(b).**

38 (3) Reasonable fees paid to an affiliate of the creditor.

(4) Interest prepaid by the borrower for the month in which the home loan is closed.

SECTION 11. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.1. (a) As used in this section, "ability to repay", with respect to a home loan, including the consolidation or refinancing of an existing home loan, means the following factors likely to affect a borrower's ability to repay the home loan at the home loan's full monthly cost:**

(1) The borrower's:

(A) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;

(B) expenses;

(C) assets; and

(D) liabilities, including any loan obligations that have been incurred but are not yet due and payable;

as of the date, or the projected date, of the closing of the home loan.

(2) The borrower's credit history.

(b) As used in this section, "borrower" includes a prospective borrower, where appropriate.

(c) As used in this section, "full monthly cost", with respect to a home loan means the maximum monthly payment that the borrower will be required to pay with respect to the home loan, calculated as the total of the following monthly costs that the borrower will be responsible for paying during the term of the home loan, to the extent determinable as of the date, or the projected date, of the closing of the home loan:

(1) Principal plus interest at the home loan's trigger rate.

(2) Property taxes. If the home loan will be secured by a new home, the construction of which will not be complete as of the date, or the projected date, of the closing of the home loan, the property taxes considered for purposes of this subsection shall be an estimate that:

(A) is based on the property taxes that were most recently due and payable with respect to completely constructed, comparable new homes located in the area in which the

1 new home is or will be located; and
 2 **(B) is not based on the assessed value of unimproved real**
 3 **estate.**

4 **(3) Homeowners insurance premiums.**

5 **(4) Private mortgage insurance premiums.**

6 **(5) Premiums for:**

7 **(A) credit life insurance;**

8 **(B) credit disability insurance;**

9 **(C) credit unemployment insurance; or**

10 **(D) other consumer credit insurance;**

11 **that the borrower has agreed to pay.**

12 **(6) Homeowners and other assessments, such as special**
 13 **assessments, condominium fees, and homeowners association**
 14 **fees.**

15 **(d) A creditor may not recommend or issue to, or procure on**
 16 **behalf of, a borrower a home loan without grounds to believe that,**
 17 **as of the date or the projected date of the closing of the home loan,**
 18 **the borrower has the ability repay the home loan as written.**

19 SECTION 12. IC 24-9-3-6, AS AMENDED BY P.L.145-2008,
 20 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2009]: Sec. 6. (a) A creditor may not charge a fee for
 22 informing or transmitting to a person the balance due to pay off a home
 23 loan or to provide a written release upon prepayment. A creditor must
 24 provide a payoff balance not later than ten (10) calendar days after the
 25 request is received by the creditor. For purposes of this subsection,
 26 "fee" does not include actual charges incurred by a creditor for express
 27 or priority delivery of home loan documents to the borrower if such
 28 delivery is requested by the borrower.

29 **(b) This subsection applies to a home loan, or the refinancing or**
 30 **consolidation of a home loan, that:**

31 **(1) is closed after June 30, 2009; and**

32 **(2) has an interest rate that is subject to change at one (1) or**
 33 **more times during the term of the home loan.**

34 **A creditor in a transaction to which this subsection applies may not**
 35 **contract for and may not charge the borrower a prepayment fee or**
 36 **penalty.**

37 ~~(b)~~ **(c) This subsection applies to a home loan with respect to which**
 38 **any installment or minimum payment due is delinquent for at least**

sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 13. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. **(a) As used in this section, "mortgage transaction" includes the following:**

- (1) A home loan subject to this article.**
- (2) A loan described in IC 24-9-1-1.**
- (3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.**
- (4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.**
- (5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.**
- (6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land in**

1 **Indiana upon which there is a dwelling that is not or will not**
 2 **be used by the borrower primarily for personal, family, or**
 3 **household purposes. The term includes a loan that is secured**
 4 **by land in Indiana upon which there is a dwelling that is**
 5 **purchased by or through the borrower for investment or**
 6 **other business purposes.**

7 **(b) As used in this section, "real estate transaction" means the**
 8 **sale or lease of any legal or equitable interest in real estate:**

9 **(1) that is located in Indiana;**

10 **(2) upon which there is a dwelling; and**

11 **(3) that is classified as residential for property tax purposes.**

12 **(c) A person may not:**

13 **(1) divide a loan transaction into separate parts with the intent of**
 14 **evading a provision of this article;**

15 **(2) structure a home loan transaction as an open-end loan with the**
 16 **intent of evading the provisions of this article if the loan would be**
 17 **a high cost home loan if the home loan had been structured as a**
 18 **closed-end loan; or**

19 **(3) engage in, a deceptive act in connection with a: (A) home**
 20 **loan; or (B) loan described in IC 24-9-1-1; or solicit to engage in,**
 21 **a real estate transaction or a mortgage transaction without a**
 22 **permit or license required by law; or**

23 **(4) with respect to a real estate transaction or a mortgage**
 24 **transaction, represent that:**

25 **(A) the transaction has the sponsorship or approval of a**
 26 **particular person or entity that it does not have and that**
 27 **the person knows or reasonably should know it does not**
 28 **have; or**

29 **(B) the real estate or property that is the subject of the**
 30 **transaction has any improvements, appurtenances, uses,**
 31 **characteristics, or associated benefits that it does not have**
 32 **and that the person knows or reasonably should know it**
 33 **does not have.**

34 **SECTION 14. IC 24-9-3-8 IS AMENDED TO READ AS**
 35 **FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. A person seeking to**
 36 **enforce section ~~7(3)~~ 7(c)(3) or 7(c)(4) of this chapter may not**
 37 **knowingly or intentionally intimidate, coerce, or harass another person.**

38 **SECTION 15. IC 24-9-4-1 IS AMENDED TO READ AS**

1 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The following
2 additional limitations and prohibited practices apply to a high cost
3 home loan:

4 (1) A creditor making a high cost home loan may not directly or
5 indirectly finance any points and fees.

6 **(2) This subdivision does not apply to a high cost home loan**
7 **described in IC 24-9-3-6(b).** Prepayment fees or penalties may
8 not be included in the loan documents for a high cost home loan
9 or charged to the borrower if the fees or penalties exceed in total
10 two percent (2%) of the high cost home loan amount prepaid
11 during the first twenty-four (24) months after the high cost home
12 loan closing.

13 **(3) This subdivision does not apply to a high cost home loan**
14 **described in IC 24-9-3-6(b).** A prepayment penalty may not be
15 contracted for after the second year following the high cost home
16 loan closing.

17 **(4) This subdivision does not apply to a high cost home loan**
18 **described in IC 24-9-3-6(b).** A creditor may not include a
19 prepayment penalty fee in a high cost home loan unless the
20 creditor offers the borrower the option of choosing a loan product
21 without a prepayment fee. The terms of the offer must be made in
22 writing and must be initialed by the borrower. The document
23 containing the offer must be clearly labeled in large bold type and
24 must include the following disclosure:

25 "LOAN PRODUCT CHOICE

26 I was provided with an offer to accept a product both with and
27 without a prepayment penalty provision. I have chosen to
28 accept the product with a prepayment penalty."

29 (5) A creditor shall not sell or otherwise assign a high cost home
30 loan without furnishing the following statement to the purchaser
31 or assignee:

32 "NOTICE: This is a loan subject to special rules under
33 IC 24-9. Purchasers or assignees may be liable for all claims
34 and defenses with respect to the loan that the borrower could
35 assert against the lender."

36 (6) A mortgage or deed of trust that secures a high cost home loan
37 at the time the mortgage or deed of trust is recorded must
38 prominently display the following on the face of the instrument:

1 "This instrument secures a high cost home loan as defined in
2 IC 24-9-2-8."

3 (7) A creditor making a high cost home loan may not finance,
4 directly or indirectly, any life or health insurance.

5 SECTION 16. IC 24-9-4-8 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A creditor may
7 not make a high cost home loan without regard to repayment ability, **as**
8 **required under IC 24-9-3-1.1.**

9 (b) If a creditor presents evidence that the creditor:
10 (1) followed commercially reasonable practices in determining
11 the borrower's debt to income ratio; **and**
12 (2) **had grounds to believe that, as of the date or the projected**
13 **date of the closing of the home loan, the borrower had the**
14 **ability repay the home loan as written, as required under**
15 **IC 24-9-3-1.1;**

16 there is a rebuttable presumption that the creditor made the high cost
17 home loan with due regard to repayment ability. ~~For purposes of this~~
18 ~~section, there is a rebuttable presumption that the borrower's statement~~
19 ~~of income provided to the creditor is true and complete.~~

20 (c) **For purposes of subsection (b)(1),** commercially reasonable
21 practices include the use of:

22 (1) the debt to income ratio:
23 (A) listed in 38 CFR 36.4337(c)(1); and
24 (B) defined in 38 CFR 36.4337(d); and
25 (2) the residual income guidelines established under:
26 (A) 38 CFR 36.4337(e); and
27 (B) United States Department of Veterans Affairs form
28 26-6393.

29 SECTION 17. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE
30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
31 UPON PASSAGE]:

32 **Chapter 4.5. Residential Real Estate Closings**

33 **Sec. 1. This chapter applies to a home loan closing that takes**
34 **place after December 31, 2009.**

35 **Sec. 2. As used in this chapter, "borrower" includes a**
36 **prospective borrower.**

37 **Sec. 3. As used in this chapter, "closing documents" refers to at**
38 **least the following documents from the set of documents provided**

to a borrower at the closing of a home loan:

(1) The HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(2) The disclosures required under the federal Truth in Lending Act (15 U.S.C. 1601 et seq.), as set forth in 15 U.S.C. 1638(a).

Sec. 4. As used in this chapter, "creditor" includes a mortgage broker in any home loan transaction in which the mortgage broker is required or allowed to provide the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 5. (a) As used in this chapter, "settlement service provider" means a person that provides any settlement service (as defined in 24 CFR 3500.2) in connection with the closing of a real estate transaction.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 6. (a) Not later than October 1, 2009, the homeowner protection unit established by the attorney general under IC 4-6-12 shall prescribe a form that:

(1) shall be used by creditors under subsection (b); and

(2) informs a borrower of the borrower's rights under section 7 of this chapter.

(b) A creditor that seeks to issue a home loan in Indiana after December 31, 2009, shall provide the notice described in subsection (a) to the borrower at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 7. (a) Subject to subsections (c) and (d), a settlement service provider shall, upon the borrower's request, permit the borrower to inspect the closing documents with respect to the home loan not later than one (1) business day before the closing of a home loan.

(b) The settlement service provider shall make the closing documents available to the borrower for inspection under subsection (a):

(1) at the office of the creditor or the settlement service provider;

- (2) through the United States mail;**
- (3) by facsimile; or**
- (4) through any other commercially reasonable means.**

(c) A settlement service provider's duty to make closing documents available to a borrower within the time set forth in subsection (a) applies only to the extent that the settlement service provider has received the needed information from the creditor making the home loan or from any other party having the needed information. If the creditor or other parties:

- (1) fail to provide the needed information; or**
- (2) provide information that is not complete;**

the settlement service provider shall notify the borrower of that fact as soon as the settlement service provider determines that the needed information will not be available or is incomplete, but in any case not later than the end of the business day before the closing of the home loan. The notice required under this subsection must be reduced to writing and provided to the borrower at or before the time of closing.

(d) A borrower may waive the right under subsection (a) to inspect the closing documents with respect to a home loan by providing a written notice of waiver to the settlement service provider at or before the time of closing.

(e) If the borrower:

- (1) requests to inspect the closing documents under subsection (a); and**
- (2) the settlement service provider:**

(A) does not permit the borrower to inspect the closing documents within the time specified in subsection (a) or in the manner specified in subsection (b); or

(B) notifies the borrower under subsection (c) that:

- (i) the settlement service provider has not received the needed information to allow the borrower to inspect the closing documents under subsection (a); or**
- (ii) the information that the settlement service provider has received is incomplete;**

the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the home loan or, in the case of a purchase money home loan, into the purchase

1 contract. A borrower that exercises the right to delay or reschedule
 2 a closing under this subsection must offer to reschedule the closing
 3 for a date that is not later than three (3) business days after the
 4 date of the closing that the borrower seeks to reschedule, subject
 5 to the availability of the other parties to the transaction.

6 (f) Subject to subsections (g) and (h) and section 8 of this
 7 chapter, if the terms of the home loan set forth in the closing
 8 documents made available to the borrower under subsection (a)
 9 differ from the terms of the home loan presented to the borrower
 10 at the time of the closing, the borrower is entitled to:

11 (1) delay or reschedule the closing without penalty and
 12 without forfeiting the right to enter into the home loan or, in
 13 the case of a purchase money home loan, into the purchase
 14 contract; and

15 (2) if the creditor does not conform the terms of the home loan
 16 to the terms set forth in the closing documents made available
 17 to the borrower under subsection (a), bring an action against
 18 the creditor (or against any subsequent holder or assignee of
 19 the home loan if the home loan proceeds to closing) for:

20 (A) actual damages, including:

21 (i) consequential damages; and

22 (ii) if the home loan does not proceed to closing, any
 23 damages suffered by the borrower as a result of not
 24 entering into the home loan or into the purchase
 25 contract;

26 (B) if the home loan proceeds to closing, statutory damages
 27 equal to two (2) times the difference between:

28 (i) the finance charges set forth in the actual loan
 29 documents; minus

30 (ii) the finance charges set forth in the closing documents
 31 made available to the borrower under subsection (a);

32 if the finance charges set forth in the actual loan
 33 documents are greater than finance charges set forth in the
 34 closing documents made available to the borrower under
 35 subsection (a);

36 (C) reasonable costs and attorney's fees; and

37 (D) injunctive, declaratory, and other equitable relief as
 38 the court determines appropriate.

1 **A borrower that exercises the right to delay or reschedule a closing**
2 **under subdivision (1) must offer to reschedule the closing for a date**
3 **that is not later than three (3) business days after the date of the**
4 **closing that the borrower seeks to reschedule, subject to the**
5 **availability of the other parties to the transaction.**

6 **(g) For purposes of subsection (f), "terms", with respect to a**
7 **home loan, means the following:**

8 **(1) The following terms, as set forth in the disclosures**
9 **provided to the borrower under the federal Truth in Lending**
10 **Act (15 U.S.C. 1601 et seq.) and as described in 15 U.S.C.**
11 **1638(a):**

12 **(A) The identity of the creditor.**

13 **(B) The amount financed.**

14 **(C) The finance charge. For purposes of this clause, the**
15 **finance charge presented to the borrower at the time of**
16 **closing is not considered to differ from the finance charge**
17 **set forth in the closing documents made available to the**
18 **borrower under subsection (a) if the difference between the**
19 **two (2) charges:**

20 **(i) is within the allowable tolerances for accuracy set**
21 **forth in 15 U.S.C. 1605; or**

22 **(ii) is the result of the expiration of an interest rate**
23 **lock-in period, or other interest rate guarantee, between**
24 **the time of the borrower's inspection of the documents**
25 **and the time of the closing.**

26 **(D) The finance charge expressed as an annual percentage**
27 **rate. For purposes of this clause, the annual percentage**
28 **rate presented to the borrower at the time of closing is not**
29 **considered to differ from the annual percentage rate set**
30 **forth in the closing documents made available to the**
31 **borrower under subsection (a) if the difference between the**
32 **two (2) rates:**

33 **(i) is within the allowable tolerances set forth in 15**
34 **U.S.C. 1606; or**

35 **(ii) is the result of the expiration of an interest rate**
36 **lock-in period, or other interest rate guarantee, between**
37 **the time of the borrower's inspection of the documents**
38 **and the time of the closing.**

(E) The total of payments. For purposes of this clause, the total of payments presented to the borrower at the time of closing is not considered to differ from the total of payments set forth in the closing documents made available to the borrower under subsection (a) if the difference between the two (2) totals is the result of the expiration of an interest rate lock-in period, or other interest rate guarantee, between the time of the borrower's inspection of the documents and the time of the closing.

(F) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(G) Any dollar charge or percentage amount that may be imposed by the creditor solely on account of a late payment, other than a deferral or extension charge.

(2) Any terms identified as loan terms in the HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(h) An action under subsection (f)(2) must be brought not later than five (5) years after:

(1) the closing of the home loan, if the home loan proceeds to closing; or

(2) the date of the first scheduled closing with respect to the home loan, if the home loan does not proceed to closing.

Sec. 8. (a) In addition to the remedies available to the borrower under section 7(f) of this chapter, if the terms of a home loan set forth in the closing documents made available to a borrower under section 7(a) of this chapter differ from the terms of the home loan presented to the borrower at the time of the closing, the attorney general, acting through the attorney general's homeowner protection unit established under IC 4-6-12, may, upon the attorney general's own motion or upon receiving a complaint from the borrower or any other person involved in the closing, investigate the circumstances surrounding the home loan to determine:

(1) the reasons for the discrepancy between the terms of the home loan set forth in the closing documents made available to the borrower under section 7(a) of this chapter and the

terms of the home loan presented to the borrower at the time of closing;

(2) whether there was an attempt by the creditor to deceive or defraud the borrower by presenting different terms at the time of the closing;

(3) whether the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents made available to borrowers before scheduled closings under section 7(a) of this chapter; and

(4) whether the creditor's actions in the case being investigated constitute a violation of:

(A) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);

(B) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or

(C) any other federal laws or regulations concerning mortgage lending;

as authorized by IC 4-6-12-3. In conducting an investigation under this section, the attorney general may cooperate with any entity described in IC 4-6-12-4 that may have jurisdiction in the matter, as authorized by IC 4-6-12-5.

(b) Subject to subsection (d), if, after an investigation conducted under subsection (a) the attorney general determines that:

(1) there was an attempt by the creditor to deceive or defraud the borrower by presenting different terms at the time of the closing; or

(2) the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents made available to borrowers before scheduled closings under section 7(a) of this chapter;

the attorney general may pursue any enforcement action or penalty available under IC 24-9-8 for a violation of this article, including bringing an action under IC 24-5-0.5, as authorized by IC 24-9-8-1, for a violation of this article. In addition, the attorney general may file a complaint with any entity described in IC 4-6-12-4 that may have jurisdiction over the matter, as

1 authorized by IC 4-6-12-5.

2 (c) If, after an investigation conducted under subsection (a), the
3 attorney general determines that the creditor has violated:

- 4 (1) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);
5 (2) the federal Real Estate Settlement Procedures Act (12
6 U.S.C. 2601 et seq.), as amended; or
7 (3) any other federal laws or regulations concerning mortgage
8 lending;

9 the attorney general may, to the extent authorized by federal law,
10 enforce compliance with the federal statutes or regulations
11 described in this subsection or refer the suspected violation to the
12 appropriate federal regulatory agencies, as authorized by
13 IC 4-6-12-3.

14 (d) Any action by the attorney general under this section must
15 be brought not later than five (5) years after:

- 16 (1) the closing of the home loan that prompted the
17 investigation, if the home loan proceeded to closing; or
18 (2) the date of the first scheduled closing with respect to the
19 home loan that prompted the investigation, if the home loan
20 did not proceed to closing.

21 Sec. 9. (a) If:

- 22 (1) the creditor or other parties having the information
23 needed for a settlement service provider to make the closing
24 documents available to a borrower as required under section
25 7 of this chapter have provided the needed information;
26 (2) the information provided by the creditor or other parties
27 is complete; and
28 (3) the settlement service provider knowingly or willfully fails
29 to make the closing documents available to the borrower as
30 required under section 7 of this chapter;

31 the settlement service provider is subject to a civil penalty of
32 twenty-five dollars (\$25), unless the borrower has waived the
33 borrower's right to receive the closing documents under section
34 7(d) of this chapter.

35 (b) A penalty described in subsection (a):

- 36 (1) may be enforced by the state agency that has
37 administrative jurisdiction over the settlement service
38 provider in the same manner that the agency enforces the

1 **payment of fees or other penalties payable to the agency; and**
 2 **(2) shall be paid into the home ownership education account**
 3 **established by IC 5-20-1-27.**

4 **(c) A settlement service provider is not liable for any other**
 5 **damages claimed by a customer because of the settlement service**
 6 **provider's failure to comply with this chapter.**

7 SECTION 18. IC 24-9-5-1, AS AMENDED BY P.L.141-2005,
 8 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2009]: Sec. 1. (a) A person who purchases or is otherwise
 10 assigned a high cost home loan is subject to all affirmative claims and
 11 any defenses, except for an affirmative claim or defense pursuant to
 12 IC 24-9-3-7, with respect to the high cost home loan that the borrower
 13 could assert against a creditor or broker of the high cost home loan.
 14 However, this section does not apply if the purchaser or assignee
 15 demonstrates by a preponderance of the evidence that a reasonable
 16 person exercising ordinary due diligence could not determine that the
 17 loan was a high cost home loan. A purchaser or an assignee is
 18 presumed to have exercised reasonable due diligence if the purchaser
 19 or assignee:

20 (1) has in place at the time of the purchase or assignment of the
 21 subject loans, policies that expressly prohibit the purchase or
 22 acceptance of the assignment of any high cost home loans;

23 (2) requires by contract that a seller or an assignor of home loans
 24 to the purchaser or assignee represents and warrants to the
 25 purchaser or assignee that either:

26 (A) the seller or assignor will not sell or reassign any high cost
 27 home loans to the purchaser or assignee; or

28 (B) the seller or assignor is a beneficiary of a representation
 29 and warranty from a previous seller or assignor to that effect;

30 (3) exercises reasonable due diligence:

31 (A) at the time of purchase or assignment of home loans; or

32 (B) within a reasonable period after the purchase or
 33 assignment of home loans;

34 intended by the purchaser or assignee to prevent the purchaser or
 35 assignee from purchasing or taking assignment of any high cost
 36 home loans; or

37 (4) satisfies the requirements of subdivisions (1) and (2) and
 38 establishes that a reasonable person exercising ordinary due

diligence could not determine that the loan was a high cost home loan based on the:

(A) documentation required by the federal Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(B) itemization of the amount financed and other disbursement disclosures.

(b) A borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

(1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:

(A) an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan is initiated;

(B) an action to collect on the loan or foreclose on the collateral securing the loan is initiated; or

(C) the loan is more than sixty (60) days in default; within three (3) years after the closing of a home loan;

(2) a violation of this article, **other than a violation or an alleged violation of IC 24-9-3-1.1(d)**, in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and

(3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:

(A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;

(B) the debt arising from the loan is accelerated; or

(C) the loan is more than sixty (60) days in default; at any time during the term of a high cost home loan.

(c) In an action, a claim, or a counterclaim brought under subsection (b), the borrower may recover only amounts required to reduce or extinguish the borrower's liability under a home loan plus amounts required to recover costs, including reasonable attorney's fees.

(d) The provisions of this section are effective notwithstanding any other provision of law. This section shall not be construed to limit the substantive rights, remedies, or procedural rights available to a borrower against any creditor, assignee, or holder under any other law.

1 The rights conferred on borrowers by subsections (a) and (b) are
2 independent of each other and do not limit each other.

3 SECTION 19. IC 24-9-5-4, AS AMENDED BY P.L.3-2005,
4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2009]: Sec. 4. **(a) This section does not apply to a violation
6 or an alleged violation of IC 24-9-3-1.1(d).**

7 ~~(a)~~ **(b)** A person who violates this article is liable to a person who
8 is a party to the home loan transaction that gave rise to the violation for
9 the following:

10 (1) Actual damages, including consequential damages. A person
11 is not required to demonstrate reliance in order to receive actual
12 damages.

13 (2) Statutory damages equal to two (2) times the finance charges
14 agreed to in the home loan agreement.

15 (3) Costs and reasonable attorney's fees.

16 ~~(b)~~ **(c)** A person may be granted injunctive, declaratory, and other
17 equitable relief as the court determines appropriate in an action to
18 enforce compliance with this chapter.

19 ~~(c)~~ **(d)** The right of rescission granted under 15 U.S.C. 1601 et seq.
20 for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et
21 seq.) is available to a person acting only in an individual capacity by
22 way of recoupment as a defense against a party foreclosing on a home
23 loan at any time during the term of the loan. Any recoupment claim
24 asserted under this provision is limited to the amount required to
25 reduce or extinguish the person's liability under the home loan plus
26 amounts required to recover costs, including reasonable attorney's fees.
27 This article shall not be construed to limit the recoupment rights
28 available to a person under any other law.

29 ~~(d)~~ **(e)** The remedies provided in this section are cumulative but are
30 not intended to be the exclusive remedies available to a person. Except
31 as provided in subsection ~~(e)~~, **(f)**, a person is not required to exhaust
32 any administrative remedies under this article or under any other
33 applicable law.

34 ~~(e)~~ **(f)** Before bringing an action regarding an alleged deceptive act
35 under this chapter, a person must:

36 (1) notify the homeowner protection unit established by
37 IC 4-6-12-2 of the alleged violation giving rise to the action; and

38 (2) allow the homeowner protection unit at least ninety (90) days

1 to institute appropriate administrative and civil action to redress
2 a violation.

3 ~~(f)~~ **(g)** An action under this chapter must be brought within five (5)
4 years after the date that the person knew, or by the exercise of
5 reasonable diligence should have known, of the violation of this article.

6 ~~(g)~~ **(h)** An award of damages under subsection ~~(a)~~ **(b)** has priority
7 over a civil penalty imposed under this article.

8 SECTION 20. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,
9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to
11 disciplinary sanctions may be required by a board to pay the costs of
12 the proceeding. The practitioner's ability to pay shall be considered
13 when costs are assessed. If the practitioner fails to pay the costs, a
14 suspension may not be imposed solely upon the practitioner's inability
15 to pay the amount assessed. These costs are limited to costs for the
16 following:

- 17 (1) Court reporters.
- 18 (2) Transcripts.
- 19 (3) Certification of documents.
- 20 (4) Photo duplication.
- 21 (5) Witness attendance and mileage fees.
- 22 (6) Postage.
- 23 (7) Expert witnesses.
- 24 (8) Depositions.
- 25 (9) Notarizations.
- 26 (10) Administrative law judges.

27 **(11) Real estate review appraisals, if applicable.**

28 SECTION 21. IC 25-34.1-6-2.5 IS ADDED TO THE INDIANA
29 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
30 [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. (a) A violation of:**

31 **(1) IC 24-5-15; or**

32 **(2) IC 24-5.5;**

33 **by a person licensed or required to be licensed under this article is**
34 **a violation of this article.**

35 **(b) A person who commits a violation described in subsection (a)**
36 **commits a Class A infraction and is subject to:**

37 **(1) the enforcement procedures described in section 2 of this**
38 **chapter; and**

1 **(2) any sanction that may be imposed by the commission**
 2 **under IC 25-1-11-12 for an act described in IC 25-1-11-11.**

3 SECTION 22. IC 25-34.1-8-7.5, AS AMENDED BY P.L.57-2007,
 4 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2009]: Sec. 7.5. (a) The investigative fund is established to
 6 provide funds for administering and enforcing the provisions of this
 7 article, including investigating and taking enforcement action against
 8 real estate fraud and real estate appraisal fraud. The fund shall be
 9 administered by the attorney general and the professional licensing
 10 agency.

11 (b) The expenses of administering the fund shall be paid from the
 12 money in the fund. The fund consists of:

13 **(1) money from a fee imposed upon licensed or certified**
 14 **appraisers and real estate brokers and salespersons under**
 15 **IC 25-34.1-2-7 and IC 25-34.1-3-9.5; and**

16 **(2) civil penalties deposited in the fund under**
 17 **IC 24-5-23.5-11(d).**

18 (c) The treasurer of state shall invest the money in the fund not
 19 currently needed to meet the obligations of the fund in the same
 20 manner as other public money may be invested.

21 (d) Except as otherwise provided in this subsection, money in the
 22 fund at the end of a state fiscal year does not revert to the state general
 23 fund. If the total amount in the investigative fund exceeds seven
 24 hundred fifty thousand dollars (\$750,000) at the end of a state fiscal
 25 year after payment of all claims and expenses, the amount that exceeds
 26 seven hundred fifty thousand dollars (\$750,000) reverts to the state
 27 general fund.

28 (e) Money in the fund is continually appropriated for use by the
 29 attorney general and the licensing agency to administer and enforce the
 30 provisions of this article and to conduct investigations and take
 31 enforcement action against real estate and appraisal fraud under this
 32 article. The attorney general shall receive five dollars (\$5) of each fee
 33 collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5, and the licensing
 34 agency shall receive any amount that exceeds five dollars (\$5) of each
 35 fee collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5.

36 SECTION 23. IC 34-30-2-89.5 IS ADDED TO THE INDIANA
 37 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2009]: **Sec. 89.5. IC 23-2-5-15 (Concerning**

1 **a person that recommends a home loan to, or procures a home loan**
 2 **on behalf of, a borrower in connection with a contract for the**
 3 **services of a loan broker).**

4 SECTION 24. IC 34-30-2-96.4 IS ADDED TO THE INDIANA
 5 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2009]: **Sec. 96.4. IC 24-4.4-3-113 (Concerning**
 7 **a creditor that recommends or issues a first lien mortgage**
 8 **transaction to a debtor).**

9 SECTION 25. IC 34-30-2-96.6 IS ADDED TO THE INDIANA
 10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2008]: **Sec. 96.6. IC 24-9-5-1(b)(2)**
 12 **(Concerning a creditor that recommends or issues to, or procures**
 13 **on behalf of, a borrower a home loan).**

14 SECTION 26. IC 34-30-2-96.7 IS ADDED TO THE INDIANA
 15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2008]: **Sec. 96.7. IC 24-9-5-4(a) (Concerning**
 17 **a creditor that recommends or issues to, or procures on behalf of,**
 18 **a borrower a home loan).**

19 SECTION 27. **An emergency is declared for this act.**
 (Reference is to HB 1176 as introduced.)

and when so amended that said bill do pass.

Representative Bardon